

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL HICKS,

Petitioner,

Case Number: 01-70951

v.

HONORABLE ARTHUR J. TARNOW

DENNIS M. STRAUB,

Respondent.

**ORDER TRANSFERRING PETITIONER'S MOTION TO AMEND
TO UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Petitioner Michael Hicks filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his 1993 convictions for first-degree murder and possession of a firearm during the commission of a felony. On January 7, 2003, the Court issued an Opinion and Order conditionally granting the petition on the ground that Petitioner was denied his Sixth Amendment right to confrontation. Respondent appealed the Court's decision to the United States Court of Appeals for the Sixth Circuit, which reversed this Court's decision and remanded the case with direction to dismiss the petition. *Hicks v. Straub*, 377 F.3d 538 (6th Cir. 2004). In accordance with the Sixth Circuit Court of Appeals' mandate, the Court dismissed the petition on December 9, 2004. Now before the Court is Petitioner's Motion to Amend the Complaint.

Petitioner seeks to amend his habeas petition to raise a new claim regarding the state court's subject matter jurisdiction over his criminal prosecution. Petitioner's

original habeas petition is no longer pending. The Court, therefore, construes this motion as a successive habeas corpus petition. Before a prisoner may file a habeas petition challenging a conviction already challenged in a prior habeas petition, the prisoner must “move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). The Sixth Circuit Court of Appeals has held that when a second or successive petition for habeas corpus relief is filed in the district court without prior authorization, the district court must transfer the petition to the Court of Appeals pursuant to 28 U.S.C. § 1631. *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

Accordingly, the Court **ORDERS** the Clerk of Court to transfer this motion to the United States Court of Appeals for the Sixth Circuit.

s/Arthur J. Tarnow
ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

Dated: July 22, 2013